



CUSTOMARY LAW BASIS FOR WORKFORCE EMPLOYMENT IN UKRAINIAN VILLAGE: HISTORICAL AND LEGAL ASPECTS

Lyudmila KUZNETSOVA,

lecturer in law, East European University of Economics and Management

Summary

On the article of theoretical research deals with the regulation of rural labor under customary law. The effect of the common principles of labor activity of the Ukrainian people. Opened the value of labor in the rites of the peasant life. Described procedure is the conclusion of employment contracts in the normal legal relationships.

Key words: custom, tradition, agreement, peasant labor, labor cooperation, personnel recruitment.

Аннотация

В статье на основе теоретических исследований рассматриваются вопросы регулирования сельского труда по обычному праву. Установлено влияние обычных основ трудовой деятельности украинского народа. Раскрыто значение трудовых обрядов в жизни крестьянина. Охарактеризована процедура заключения трудовых договоров в обычных правоотношениях.

Ключевые слова: обычай, традиция, договор, крестьянский труд, трудовая кооперация, личный найм.

Formulation of the problem. In Ukraine customary law has always been treated with great respect. The Ukrainians even believe that the one who forgets his ancestors' customs is punished by God and people. He wanders around the world like the prodigal son and will never find neither a shelter nor a dwelling for he has fallen from grace with his own people.

Stated of the study. The question of customary law basis for regulation of labour has been raised by ethnographers, historians, jurists including V. Vasylenko, O. Voropai, O. Dobrov, V. Ivanov, O. Ivanovska, S. Kylymnyk, N. Illarionov, V. Sharovkin.

Setting research objectives: to study the impact of customary principles on the labour of the Ukrainian people; to highlight the importance of labor rituals in the life of the Ukrainians.

Presenting research results. Customs are not only the object of investigation of ethnographers, they contain much more information than meets the eye. A thorough and detailed study of the historical aspects of some phenomenon enables a scholar to trace and to see which factors have affected people's lives, their identity forming and in what way they have done it. It can help to revitalize and preserve the national idea of labour relationship as well. A new Labour Code of Ukraine is being created now and law-makers tend to take the codes and laws of other countries as its basis, thus pushing away the national legislative idea of labour. And if the law-makers take into account the historical peculiarities of labour in Ukraine, the labour relationship between our citi-

zens will be much easier. Therefore, every aspect should be considered in the new labour law: the people's mentality, the country's economy, natural and geographical conditions, agricultural sector development.

The Ukrainian peasant has always strived for his own piece of land that would be his life, his breadwinner, he has always tended to direct all his efforts to his land and to get satisfaction and joy from his hard work in return. Nevertheless not everyone lives out this dream. The reasons are different: social or financial status may stand in someone's way, other people are afraid of responsibility. The only way to survive and to provide for the family is to become employed, which is a general practice in Ukrainian villages and a way to earn one's living.

From the fifteenth century downwards the traditional types of personal employment among rural population were *zazhyn* (personal employment during harvesting) and *zamolot* (personal employment during threshing), *toloka* (or communal work, which took place to accomplish a task such as clearing a field of timber or raising a barn), *supriaha* (traditional form of agricultural cooperation), labor unions of beekeepers and *tiutiunmysias* (tobaccoists), livestock grazing. Employment contracts for *zamolot* and *zazhyn* were concluded in advance with the poorest peasants, who had nothing to lose. These contracts comprised enslaving terms. In a point of fact, peasants were obliged to be ready to start their work and stay in the field a few months before harvesting. The work of such peasants was certainly risky

for they could remain out of work in case of drought, plunder, corn failure. The employed reaper men also known as *snipov-yks* [1, p. 78] usually received every third or fourth crop bundle they had reaped; and in a bumper year the landlord could give half of his harvest to his workers. The employment contract with the reaper men was usually concluded when the corn was ripe so that they were sure their labour was not lost and they would be rewarded for it. One of the terms and conditions of the contract was the landlord's obligation to provide board for the workers at his own expense, and this was a part of Ukrainian hospitality, which had been preserved until the present day. However the reaper man was required for a conventional crop bundle to remove all the roots and get all crops into *klunya* (barn) as directed by the owner. As for his own part of the harvest, the reaper man could do with it whatever he wished. If he lived far from the field he could take advantage of the landlord's permission to keep the bundles earned in his own barn. There the worker could thresh his bundles, sell the straw, and after the work had been finished, he took the grain home.

As known, the last stage of grain crop harvesting is threshing. The employed workers could thresh grain *za korobku* ("for a box"), which meant that the worker got the 10th or the 12th measure of the threshed grain [11, p. 34]. Sometimes people received straw for their work, this shows how poor the peasants were. Like in the situation with *zazhyn*, in *zamolot* the worker was dependant on two factors: the landlord's personal char-



acteristics and the harvest. The reaper men's wives were employed by the same owner as their husbands. They worked in the kitchen garden and in the back yard, did the housework. Women did not want their work to be paid with money. In one of his literary works the outstanding Ukrainian writer Mykhailo Kotsiubynskyi writes: "...Полночи на городі в багатого мужика, вона не хотіла брати грошей, а прохала відсипати пшеничним зерном, щоб мати гарний гатунок пшениці" [9, p. 213]. (She did not want to take money for her grubbing up weeds in a rich man's kitchen garden. Instead she asked to give her some grain, so as she could have wheat grain of good quality). Thus, the peasants believed that having taken the landlord's grain or seeds, or even some "bad" cattle, they would receive some part of the owner's wealth. It is with this form of labour payment that the peasants had finally established payment in kind, thus, disqualifying themselves and depriving themselves of money.

The lack of draught animals in farms was common in the 18th and 19th centuries, for only wealthy landlords possessed a sufficient amount of draught animals. They were sometimes called "masters, who have their feet on the ground" [12, p. 23]. That is why when doing some major jobs that would be difficult to carry out alone, one of the forms of collective labor relationship was agricultural cooperation. The need for draught animals had led to the tradition of mutual help during plowing, which became known as *supriaha*. The gist of it was that people mutually helped each other in cultivation and yoked their oxen and horses to the plough. The very fact of existence of such forms of cooperation shows that ordinary people were able to team up for mutual assistance, since it was very difficult to farm in the village without mutual help, and even nowadays mutual assistance still exists in Ukrainian villages. *Supriaha* was predominantly an oral agreement of two parties. The *supriaha* contract determined the way each peasant participated in agricultural cooperation – whether he provided his plough or oxen, whether he was a ploughman or a bullwhacker. It also determined plowing order, workers' board, livestock handling, plough repairing.

Agreement-based regulation of shepherd's labour should be regarded as a special kind of employment. Compared to

other kinds of employment, in which both parties were natural persons, in this relationship one of the parties was a legal entity, that is a village community. It was a village community that arranged livestock grazing in spring-summer period. After the employment was over the community had to pay the shepherd for his work. The shepherd demanded payment not from the individuals but from the whole community that represented the paying party.

Shepherds' employment was seasonal and time limited: "З весняного Юрія (6 травня) до самих білих мух", а "снігу не буде, то й до загонів (14 листопада) пропазе" [3, p. 53]. (From Yuri's (St. George's) Day on May 6 until it snows, in case there's no snow he can graze till November 14). The payment for cattle grazing in summer usually included some money and a *pood* (16 kg) of grain. All this was paid at the end of the summer. In spring or in the middle of the summer the shepherd, having notified the landlords in advance, put the sheep or the pigs into the fold, where they were kept until he got his money. The shepherd was not responsible for a sheep that was torn by the beast, but if the sheep was injured and the shepherd did not rescue the animal, he had to pay its cost to the landlord. This is the way contractual obligations were fulfilled.

In the Carpathians distant pastures known as *polonynas* (areas of subalpine and alpine meadows in the upper zone of the Ukrainian Carpathians) were developed. In the Ukrainian ethnic and cultural region of Hutsulshchyna such pastures were arranged by the land tenant called *deputat* (deputy) who was elected by the community. He made a landlord-tenant contract, named a sum of money paid by each livestock owner depending on the amount of livestock, employed shepherds, decided when the livestock produce was delivered from the pasture to certain owners, superintended the work of the whole farm unit.

Toloka was another characteristic activity of Ukrainian peasants. It arose as a way of accomplishing those tasks that would be difficult to carry out alone and as a means of rendering assistance to those who needed it, including widows, elderly people. It was a form of mutual help. This custom dates back to the time when the first segregated property has appeared and primitive society has turned into territorial community. *Toloka* includ-

ed such major jobs as agricultural labour; providing assistance in transporting the purchased houses, barns, grains, threshing mills, mills or windmills from one village into another; timber cutting; oil pressing; doing the housework; even building houses or other facilities. Most of the jobs were done both by men and women including youth. At the same time there were certain collective jobs done either by women or by men only. As a rule, *toloka* was arranged in the morning on Sunday or on a holiday. Ukrainians believed that it was a sin to work for oneself on such days whereas a help to you neighbor was approved.

In the 19th and at the beginning of the 20th century the situation with the employment of land-poor and landless peasants worsened. This led to new customs that were of exploitative nature. These were various additional works, surcharges to landowners. Extra workdays in the field or on the farm for every leased *desiatyna* (2,7 acres) of land. Such jobs were called by people *vidbutok*, *panschyna*, *basarnyky* [2, p. 89]. Thus, peasants unconsciously started to get lands through bribery. From then on all those landowners who leased their lands began to ask for *basarnyky*.

Contractual obligations of personal employment did not stipulated for equality for the employer and the employee; the latter had to sign an unfavorable contract that often suppressed his personal rights and freedoms. "*Ruska Pravda*" (the legal code of Kievan Rus and the subsequent Rus principalities during the times of feudal division) had already legislated this inequality between the parties of labour relationship, formalizing personal dependence of *kholops* (feudally dependent people in Kievan Rus) and enslaved people. This dependence stemmed from excessive labour duties put on them. A vivid example of this is the work of *tiutiunnytsias* (tobaccoists). Only unmarried females (tradeswomen, commoners and craftswomen) were employed for this job since March 25 until November 15. They were secured for *desiatyna* (2,7 acres) or even a plantation of tobacco. As soon as the snow had melted they started cleaning ditches and gardens, limestoning houses, digging vegetable pitches, planting vegetables; while working on tobacco plantations they did some other jobs as well, they grubbed up weeds, reaped corn. Nevertheless only their work in tobacco fields (cutting off the stalk, pull-



ing leaves off the stalk, tobacco bundling) were paid. If tobacco work was finished in October, the girls did the housework, embroidered *rushnyks* (ritual clothes embroidered with symbols and cryptograms of the ancient world) and *vyshyvankas* (traditional shirts which contain elements of Ukrainian ethnic embroidery) until the middle of November.

Employment for a year, that is in modern legal terminology fixed-term employment contract, had its own peculiarities. The employee's payment was called *rok-ivshchyna* (payment for a year of work) and was paid according to the custom at the end of a year in cash money, grain and clothing. Throughout the year the landlord provided his worker with clothes that would later be given to the worker to come. A year term was usually considered from the feast to the feast, even if this one was not celebrated on a fixed date, for example from Easter to Easter. If the laborer wanted to leave his landlord before the year was over, he had to give back the clothes and received no payment for his work. When the landlord due to certain circumstances had no longer a need for laborers and let them leave, he was obliged to pay for their work.

The procedure for the conclusion of contracts was of great importance to the customary law. Its validity was determined by the availability of compulsory attributes and certain solemnities. A personal employment contract included such points: request, job offer and finally the agreement itself. At the same time it included some rituals: prayer, handshake, *mohorych* (drinking some alcoholic beverages as a final stage of making an agreement), tea-drinking, wage advance [4, p. 9].

Legal customs of the peasants in *Vovchanskyi povit* (Vovchansk county) included the following rituals of making an agreement: before making an agreement the parties put their hats off, prayed eastwards, after that the employer named his pay, put out his right hand with palm up and asked "Do you agree or what do you suggest?" The other party, that is the employee, flapped the employer's palm with his right hand and suggested his wages. It was repeated several times until both parties agreed on certain wages. This ritual was performed with bare hands [11, p. 22]. An essential part of the agreement was the determining of the tenure of employment. The tenure was usually agreed upon. There was a general tenure

for housework or works in the field and a completion contract.

Having studied the verdicts of *volost* (a traditional administrative subdivision) courts the Ukrainian poet and ethnographer Pavlo Chubynskyi gives the example of one carpenter. He was employed but failed to fulfill contractual obligations. When his employer was going to sue upon him, the carpenter objected and said: "But we didn't drink *mohorych*". And the court dismissed the suit [12, p. 9]. According to the custom *mohorych* was essential to validate the agreement.

According to the customary law anyone could be either an employer or an employee. There were no restrictions as to the age of a person. Moreover it didn't matter whether a person was legal or not. An important role in personal employment played a family as an economic entity in which each member's labour was aimed at the family welfare. Thus, the head of the family had the right to order about family members' labour and could give any one of his family for employment in exchange for money or some other reward.

Calendar rites also played an important role in the relations regulated by the customary law. The agricultural ritual calendar included winter, spring, summer and autumn rites and customs aimed at protecting the harvest and successful harvesting; peasants summed up their work in the fields, orchards and gardens. The social task of calendar rites was to ensure the welfare of the family and the community. Its legal role was to ensure compliance of the way the person worked with the person's social status: the more one worked during the year the more successful and wealthy he was and the more respected he was by the members of the community.

Conclusion. A specific feature of the customary law is the public mind that ensures its implementation and is an obligation which provides a rule of customary law compliance in case of its infringement. The Ukrainian customary law, being a form of national identity and the life arrangement of the Ukrainian people, serves as a basis for the Ukrainian national idea forming.

We are witnesses of creating the new modern Ukraine and the participants of this process. More than a thousand years of experience of social and political consolidation of the Ukrainian people lay the foundation for the development of the state

governed by the rule of law. And what protection of the rights can we talk about if these rights are not fixed by law, in this case by the Labour Code. The adoption of this document brings along spiritual self-perfecting of the Ukrainian society, for it will clearly define all aspects of labour relations in all sectors of the national economy.

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